IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

OP.No. 25161 of 2001(U)
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PETITIONER:
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K.M.SIDDIQUE, S/O.MAMADU,
KOLLIYIL HOUSE, EDAVANAKKAD.

BY ADV. SRI.K.I.ABDUL RASHEED

RESPONDENTS:
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1. THE DEPUTY TAHSILDAR,
TALUK OFFICE, COCHIN.

2. THE VILLAGE OFFICER,
EDAVANAKKAD.

3. THE SECRETARY, GREATER COCHIN
DEVELOPMENT AUTHORITY, COCHIN-20.

R1&2 BY G.P. SMT.SMITHA SUKUMARAN
ADV. SRI.K.P.DANDAPANI (SR.) FOR R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.41061/2001 IN O.P. NO.25161/2001

DISMISSED:

1.12.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF DOCUMENT NO.2452/94 OF ERNAKULAM SUB REGISTRY EXECUTED IN FAVOUR OF THE PETITIONER.

P2: TRUE COPY OF DOCUMENT NO.2330/86 OF ERNAKULAM SUB REGISTRY EXECUTED BY R3 IN FAVOUR OF SRI.M.N.V.NAIR.

P3: TRUE COPY OF NOTICE DT.10.3.2000 ISSUED BY R3.

P4: .DO. DT.1.12.2000 .DO.

P5: TRUE COPY OF REPLY DT.19.1.2001 SENT TO R3.

P6: TRUE COPY OF NOTICE DT.25.1.2001 ISSUED BY R3.

P7: TRUE COPY OF UNDERTAKING DT.20.1.1994 GIVEN BY PETITIONER.

P8: TRUE COPY OF DEMAND NOTICE DT.NIL ISSUED U/S.7 OF R.R. ACT.

P8(a): TRUE COPY OF DEMAND NOTICE DT.NIL ISSUED U/S.34 OF THE RR ACT.

RESPONDENT'S EXHIBITS:

R3(1): TRUE COPY OF LETTER DT.27.12.1979.

R3(2): TRUE COPY OF ORDER DT.17.4.1986 OF THE SECRETARY, GCDA.

R3(3): TRUE COPY OF FORM II FROM THE PETITIONER TO THE SECRETARY, GCDA ALONG WITH THE CONDITIONS OF ALLOTMENT OF COMMERCIAL PLOTS.

TRUE COPY

PA TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.25161 of 2001

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Dated this the 1st day of December, 2007.

JUDGMENT

The petitioner is challenging demand of additional compensation by GCDA for the land purchased from the petitioner vide Ext.P1 sale deed. According to the petitioner, entire sale consideration is paid in terms of sale deed and property is not subject to any liability. However, according to GCDA, the property purchased by the petitioner was originally allotted to one Mr.C.N.Unnikrishnan who sought permission from GCDA to transfer the property to one Mr.M.N.V.Nair from whom petitioner purchased the property vide Ext.P1 sale deed. GCDA has produced Ext.R3(2) order granting approval of transfer of property from the original allottee to Mr.M.N.V. Nair wherein it is specifically stated that the approval of transfer is subject to same terms and conditions of allotment of land to Mr.C.N.Unnikrishnan, who under the terms of allotment was admittedly liable to pay additional compensation for the land acquired by the GCDA. It is clear from Ext.R3(3) produced by GCDA that Mr.M.N.V.Nair from whom petitioner had purchased the property had given undertaking that he will abide by all the terms of allotment that was in existence and such other

terms as may be prescribed by GCDA. The petitioner does not dispute the fact that the original allotment of land was subject to allottee paying additional compensation awarded in Land Acquisition proceedings, to the GCDA.

2. The only question to be considered is whether liability to pay additional compensation which is a term of allotment of the land, could be enforced against the petitioner who is the purchaser of the land from transferreee of an allottee. As found above, the transfer from allottee to the seller Mr.M.N.V. Nair from whom petitioner purchased the land is subject to the conditions of allotment. Therefore, the person from whom petitioner purchased the property is liable to pay additional compensation in accordance with terms of purchase of land by him approved by GCDA. Consciously or otherwise, the seller has not mentioned anything about the liability undertaken by him to pay additional cost for the land purchased by him and sold to the petitioner vide Ext.P1. I do not think it makes any difference whether there is any recital in the sale deed or not because so long as the term of original allotment of land continues i.e. liability to pay additional compensation is transferred from the original allottee to his transferree i.e. the person from whom petitioner purchased, the land purchased is subject to charge and GCDA will be able to recover it by

attachment and sale of land purchased by the petitioner under Ext.P1 sale deed. If seller has suppressed the liability on the land which caused any loss to the petitioner, it is for the petitioner to proceed against the seller. However, since the petitioner's seller's title was subject to liability to GCDA for the additional compensation, the land purchased by the petitioner will be subject to such charge and petitioner has no escape from it. Therefore, the petitioner's challenge against the demand is rejected. However, having regard to the inordinate delay in proceeding for recovery and since this court had granted stay against recovery proceedings till now, I direct the GCDA to waive the interest provided petitioner pays the additional compensation within one month from date of receipt of copy of this judgment by the petitioner. The petitioner will produce copy of this judgment and remit the additional compensation demanded by GCDA exclusive of interest for them to waive interest. However, if petitioner does not settle liability within the time stated above, GCDA will be free to proceed to recover the entire arrears with interest till date of recovery.

C.N.RAMACHANDRAN NAIR
Judge

pms